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13 UNITED STATES DISTRICT COURT

14 FOR THE NORTHERN DISTRICT OF CALIFORNIA

15 OAKLAND DIVISION

16  
17 DAVID LOWERY, VICTOR  
18 KRUMMENACHER, GREG LISHER, and  
19 DAVID FARAGHER, individually and on  
behalf of themselves and all others similarly  
situated,

20 Plaintiffs,

21 v.

22 RHAPSODY INTERNATIONAL INC.,

23 Defendant.

Case No. 4:16-CV-01135-JSW

**DECLARATION OF PAULINE  
MARTIN IN SUPPORT OF  
RHAPSODY'S MOTION TO DISMISS  
PURSUANT TO RULE 12((b)(1) FOR  
LACK OF ARTICLE III STANDING**

The Hon. Jeffrey S. White

Complaint Filed: March 7, 2016

1 I, Pauline Martin, declare:

2 1. I am Director of Music Licensing at Rhapsody International Inc. ("Rhapsody"). I  
3 have been at my current position since October 2014. I have 23 years of experience in music  
4 licensing and publishing administration, including 20 years working for rightsholders (including a  
5 major publishing company). I submit this declaration in support of Rhapsody's Motion to Dismiss  
6 Pursuant to Rule 12(b)(1) for Lack of Article III Standing. I have personal knowledge of the facts  
7 set forth in this declaration, except as otherwise noted, and, if called as a witness, could and would  
8 testify to those facts under oath.

9 2. Rhapsody's digital music streaming service offers subscribers access to millions of  
10 tracks in return for a monthly subscription fee. These tracks include popular tracks from well-  
11 known performing artists signed with major record labels, and also tracks from new, independent,  
12 and lesser-known songwriters and musicians, which gives these artists access to millions of music  
13 fans.

14 3. A large proportion of Rhapsody's revenue is paid to rightsholders, including record  
15 labels, content aggregators, music publishers (via Rhapsody's licensing administrator, the Harry  
16 Fox Agency ("HFA")) and performing rights organizations, who in turn pay the songwriters and  
17 artists who create the music.

18 4. In today's digital music market, streaming services typically receive a sound  
19 recording file just hours or days in advance of the release date of the recording. Songwriters,  
20 publishers, artists, and labels almost universally expect and require songs or albums to be  
21 available to users on streaming services (including Rhapsody) on the release date (or when  
22 provided to Rhapsody), not later, and I am informed by Rhapsody's content team that Rhapsody  
23 typically receives tens of thousands of new songs every week from record labels and distributors.  
24 Accordingly, determining the proper ownership rights for various underlying musical works  
25 featured in the sound recordings and licensing those works in advance of their availability on the  
26 service is a significant challenge.

27 5. For this reason, Rhapsody follows industry practice, offering the music  
28 immediately, getting licenses issued and issuing Notices of Intention under Section 115 of the



1 Copyright Act (“NOIs”) when the rightsholders are identified, and paying rightsholders  
 2 irrespective of whether they can be identified in the registration or other public records of the  
 3 United States Copyright Office.

4 6. Rhapsody has engaged HFA to administer mechanical licenses and royalties on its  
 5 behalf and provide research services to identify ownership of musical works. In addition to  
 6 providing those administration services for Rhapsody (and other digital music services), HFA  
 7 administers licenses and royalties on behalf of tens of thousands of copyright holders of musical  
 8 compositions, representing millions of works.

9 7. HFA is very prominent in the music industry, and its role and function are well  
 10 known. It is standard industry practice for publishers to actively register their works with HFA,  
 11 knowing that providing that information will significantly facilitate the licensing process.

12 8. Based on data provided by HFA, I am informed that in the past, music artists David  
 13 Lowery, Victor Krummenacher, Greg Lisher, and David Faragher (collectively “Plaintiffs”) had  
 14 entered into a relationship with HFA-affiliated publishers, which assist HFA in the identification  
 15 of copyright owners and the payment of mechanical royalties. Plaintiffs used well-known HFA-  
 16 affiliated publishers for several of the tracks on the following albums released by one or more of  
 17 the Plaintiffs’ musical groups: *Our Beloved Revolutionary Sweetheart* (Camper van Beethoven,  
 18 1988), *Cracker* (Cracker, 1992), *Kerosene Hat* (Cracker, 1993), *Camper Vantiquities* (Camper van  
 19 Beethoven, 1993), *The Golden Age* (Cracker, 1996), *Garage d’Or* (Cracker, 2000), *Popular Songs*  
 20 *of Great Enduring Strength and Beauty* (Camper van Beethoven, 2008). HFA has advised that it  
 21 has licenses for those HFA-affiliated publishers’ repertoire, and Rhapsody has paid the applicable  
 22 royalties via HFA, pursuant to HFA’s agreements with those music publishers.

23 9. The mechanical royalties are just a fraction of the overall royalties paid by  
 24 Rhapsody for use of the music on the Rhapsody streaming service. If Rhapsody (and other  
 25 streaming services) did not distribute those tracks, then the artists and writers would receive no  
 26 royalties in respect of distribution of the sound recording and no royalties for public performance  
 27 of the musical works, which royalties cumulatively can amount to many times the royalties  
 28 payable in respect of the mechanical licenses. HFA has informed me that it calculates that, through

1 November 2016, the sum total of the mechanical royalties owing to Plaintiffs by Rhapsody for all  
2 of the compositions listed in the Complaint is less than \$70.

3 10. I declare under penalty of perjury under the laws of the United States of America  
4 that the foregoing is true and correct to the best of my knowledge and relying on the sources  
5 indicated above. Executed on February 17, 2017 in Maplewood, New Jersey.

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Pauline Martin